

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WEST VIRGINIA UNIVERSITY)	
BOARD OF GOVERNORS)	
on behalf of)	
WEST VIRGINIA UNIVERSITY)	
))	
Plaintiff,))	
v.))	
MIVAMAN, LLC, et al.))	
))	
Defendants.))	
_____))	

No. 1:12-cv-5-FPS

ORDER OF DISMISSAL AND PERMANENT INJUNCTION

Upon consideration of the Joint Motion for Order of Dismissal and Permanent Injunction, filed by Plaintiff West Virginia University Board of Governors on behalf of West Virginia University ("University") and Defendants Mivaman, LLC, JFord, Inc., and Kevin W. Ford ("Defendants"), it is hereby ORDERED:

1. Based on the parties' representation that they have reached a settlement to dispose of this case, the entire action is dismissed pursuant to Fed.R.Civ.P. 41(a)(2), subject to the conditions set forth below.
2. Neither party shall bear the other's court costs or attorneys' fees which otherwise may be taxable pursuant to Fed.R.Civ.P. 54, LR Civ. P 54.01, or any applicable federal or state statute.
3. The following salient terms of the parties' Settlement Agreement ("Agreement"), as well as the entire Agreement, are hereby incorporated by reference and shall become part of this final order of the Court:

- a. University owns a family of marks that include the word marks "West Virginia," "WVU," and "Mountaineers," as well as a stylized "Flying WV" mark and a Mountaineer design mark, and has obtained the following federal trademark registrations, among others:

Trademark	Reg. No.	Reg. Date
WEST VIRGINIA	2,611,149	Aug. 27, 2002
WVU	2,599,930	July 30, 2002
MOUNTAINEERS	2,613,676	Sept. 3, 2002
FLYING WV (stylized)	1,321,952	Feb. 26, 1985
MOUNTAINEER (design mark)	1,321,767	Feb. 26, 1985

University also owns unregistered and common law trademark rights to LET'S GO MOUNTAINEERS! and GOLD RUSH. Collectively, the foregoing seven registered, unregistered, and common law trademarks are hereinafter referred to as the "University Marks." University has designed, developed, produced, marketed, distributed, sold, and licensed goods and services utilizing the University Marks, other registered and unregistered marks, as well as its gold and blue color scheme. The University Marks are "famous" marks within the meaning of applicable trademark law.

- b. Defendants created a variety of t-shirts and other novelty items incorporating the University Marks or marks confusingly similar thereto and sold such products at their Fastees storefront in Morgantown, WV as well as on its commercial websites, including but not limited to www.fastees.com. Among the products containing University Marks or marks confusingly similar thereto and sold by Defendants were

	Product Code	Description
1.	collegeshwag-1	T-shirt: "West Fuckin Virginia"
2.	collegeshwag-1n	T-shirt: "West Fuckin Virginia"
3.	1023	T-shirt: "West By God Virginia"
4.	1024	T-shirt: "West By God Virginia"
5.	westbygodvirginianavy	T-shirt: "West By God Virginia"
6.	westbygodvirginiaash	T-shirt: "West By God Virginia"
7.	westbygodvirginiahoodie	Sweatshirt: "West By God Virginia"
8.	westbygodvirginiagoldsweat	Hoodie: "West By God Virginia"
9.	1025	T-shirt: "I Only Flash West Virginia Fans"
10.	1030	T-shirt: "Blood Sweat and Eers"
11.	1031	T-shirt: "Let's Go! Drink Some Beers!"
12.	letsgodrinksomebeersltblue	T-shirt: "Let's Go! Drink Some Beers!"
13.	letsgodrinksomebeersweat	T-shirt: "Let's Go! Drink Some Beers!"
14.	1032	T-shirt: "I Only Flash West Virginia Fans"
15.	1034	T-shirt: "I Only Sleep With West Virginia Fans"
16.	1039	T-shirt: "The Incredible Eers"
17.	1040	T-shirt: "Very Wasted"
18.	1037	T-shirt: "West Virginia"
19.	1038	T-shirt: "West Virginia"
20.	Collegeshwag-3	T-shirt: "Gold Fuckin Rush"
21.	wfv1-1	T-shirt: "West Fuckin Virginia"
22.	best-1	T-shirt: "Best Fuckin Virginia"
23.	bestfuckinvirginianavy	T-shirt: "Best Fuckin Virginia"
24.	bestfuckinvirginiagold	T-shirt: "Best Fuckin Virginia"
25.	dont-curse-1	T-shirt: "Don't Curse" / "West F##### Virginia"
26.	doitinthemud	T-shirt: "West Virginia Girls Do It In The Mud"
27.	99-1	T-shirt: "I am 99% West Virginia"
28.	Pbcooler	Cooler: "Lets Go Drink Some bEERS!"
29.		Temporary Tattoo: "West Fuckin Virginia"
30.		Temporary Tattoo: "Gold Fuckin Rush"

as well as all other goods or services bearing the phrases "West Fuckin Virginia", "Best Fuckin Virginia", "Let's Go! Drink Some Beers!", "Let's Go! Drink Some bEERS!" or reproductions or imitations of the University's FLYING WV or MOUNTAINEER design marks. Collectively, the foregoing products are hereinafter referred to as "Infringing Products."

- c. Defendants registered or otherwise acquired and currently own a number of internet domain names that include the University Marks, including but not

limited to www.westfuckingvirginia.com; www.westfuckinvirginia.com; www.mywvu.com; www.wyushirts.com; www.wvutees.com; and www.wvutoday.com. Collectively, the foregoing six internet domain names are hereinafter referred to as the "Domain Names";

- d. Defendants Mivaman, LLC, JFord, Inc., and Kevin W. Ford, individually and collectively, and all of their agents, officers, employees, representatives, successors, assigns, attorneys, and all other persons acting for, with, by, through, or under authority from Defendants, or in concert or participation with Defendants, agree to be and are hereby PERMANENTLY ENJOINED from
 - i. Manufacturing, distributing, shipping, advertising, marketing, promoting, donating, selling and/or otherwise offering for sale any Infringing Products or any designs (regardless of the color ink or color garment used) that are similar to the Infringing Products;
 - ii. Using any of the University Marks or any other copy, reproduction, or colorable imitation or simulation of any of the University Marks, or other trademark, service mark, name, logo, design, color scheme, or source designation of any kind on or in connection with Defendants' goods or services, or the goods or services of any entity with which Defendant Ford is associated or affiliated, that is (i) a copy, reproduction, colorable imitation, or simulation of, or confusingly similar to, or in any way similar to or dilutive of University's trademarks, service marks, names, logos, or color schemes or University Marks; or (ii) likely to cause confusion, mistake, deception, or public misunderstanding that such goods or services

are produced or provided by University, or are sponsored or authorized by or in any way connected or related to University.

- iii. Passing off, palming off, or assisting in passing off or palming off, their domain names, clothing, or other unlicensed goods or services, as those of University.
- iv. Selling or offering for sale to the public any product licensed by University unless or until Defendants shall obtain licenses to manufacture or sell University licensed products.
- v. Notwithstanding subsections i and ii above, Defendants may manufacture, distribute, market, advertise, promote, display, dispose, donate, or offer for sale goods or services which use the phrase "West Virginia" provided that "West Virginia" is used purely in a non-infringing and non-diluting manner as follows:
 1. The phrases "West By God Virginia", "State of West Virginia", "[Any city name], West Virginia", and "West Virginia" (the "Phrases") shall be the only permitted uses of "West Virginia." No variations, permutations, or substantially similar imitations of the Phrases shall be permitted. Goods and services bearing the Phrases shall conspicuously contain other design elements (e.g., an outline of the State of West Virginia or "1863", the year the State of West Virginia was founded, and other graphics, words, or phrases that are purposefully designed to negate any inference, insinuation, or suggestion of an association, connection, or

affiliation with University or any of its students, alumni, faculty, or employees and avoid any inference or suggestion of tarnishment of any University Marks) so that such goods and services do not infringe upon or dilute University's rights to its WEST VIRGINIA mark, are not likely to cause confusion or mistake, or do not deceive as to affiliation, connection, or association with the University, or trade upon the goodwill of University;

2. All words or letters of the Phrases shall be of substantially the same font size, provided, however, that the difference between the smallest font size and the largest font size utilized on any given goods or services shall not be greater than eighteen (18) points;
3. Goods or services, on which the Phrases are placed, shall not use any font the same as or substantially similar to a font (a) used by the University on its athletic team uniforms; (b) located on the current University Art Style Sheet (Exhibit A hereto) or any subsequent revision thereto; (c) or otherwise appearing on goods or services that are officially licensed by the University;
4. Goods and services bearing the Phrases shall not be created using (a) gold or blue articles of clothing or (b) gold or blue ink or fonts except where, from the overall context of the specific goods or services at issue, the use of gold or blue refers solely to the State of West Virginia and there is no inference, insinuation, or suggestion of an association, connection, or affiliation with University or any

of its students, alumni, faculty, or employees so that such goods and services do not infringe upon or dilute University's rights to its WEST VIRGINIA registered mark, are not likely to cause confusion or mistake, or do not deceive as to affiliation, connection, or association with the University, or trade upon the goodwill of University;

5. Goods and services bearing the Phrases shall not include any University Marks or any marks substantially similar to any University Marks;
 6. Goods or services bearing the Phrases shall not have product descriptions, or product codes, or source identifiers that suggest or imply any affiliation, connection, or association with the University, or trade upon the goodwill of University including but not limited to "college," "university," "collegeshwag," or "collegeswagg" or other substantially similar designations.
- vi. Notwithstanding subsections i and ii above, Mivaman, JFord, and Ford may manufacture, distribute, market, advertise, promote, display, dispose, donate, or offer for sale goods or services which use the phrase "Let's Go! Drink Some Beers!" provided such goods and services shall not:
1. Use any font the same as or substantially similar to a font (a) used by the University on its athletic team uniforms; (b) located on the current University Art Style Sheet (Exhibit A hereto) or any

subsequent revision thereto; (c) or otherwise appearing on goods or services that are officially licensed by the University;

2. Deviate in capitalization or punctuation from "Let's Go! Drink Some Beers!";
 3. In any way emphasize or de-emphasize the "eers" in the word "Beers" or emphasize or de-emphasize the word "Beers" using different font sizes or other graphic techniques relative to the other words in the phrase "Let's Go! Drink Some Beers!";
 4. Be created using: (a) gold or blue articles of clothing; (b) gold or blue ink or fonts; or (c) the University's gold and blue color scheme;
 5. Utilize any University Marks or any marks substantially similar to any University Marks; or
 6. State, suggest or imply any affiliation, connection, or association with the University or any of its students, alumni, faculty, or employees, trade upon the goodwill of the University, or dilute any University Marks.
- vi. The scope of the permanent injunction is worldwide and includes all channels of trade or marketing, including but not limited to brick-and-mortar stores, sales booths, temporary sales locations, independent sales representatives, distributors, or on the Internet, including but not limited to the Fastees store located in Morgantown, West Virginia and the website located at www.fastees.com. The injunction expressly includes any store,

electronic sales site, or internet site created in the future and operating under another name which is owned by or operating at the direction of or in concert with any of the Defendants.

- e. Defendants, shall, no later than five (5) calendar days after the date of this Order, recall all Infringing Products which have been shipped by them or under their authority, to any wholesaler, distributor, retailer, consignor, or marketer, and also deliver to each such wholesaler, distributor, retailer, consignor, or marketer a copy of this Order. Within five (5) business days of receipt of any recalled or returned Infringing Products, Defendants shall deliver such Infringing Products to University for impoundment and destruction.
- f. Defendants shall deliver to University, no later than five calendar days after the date of this Order, for impoundment and for destruction all Infringing Products, bags, boxes, labels, tags, signs, packages, receptacles, advertising, sample books, promotional material, stationary and all silk screens or similar items used to manufacture the Infringing Products or other materials (in tangible or electronic format) in their possession, custody, or control that adopt or infringe any of the University Marks or that otherwise compete with University and its licensed products. Defendants, when presenting Infringing Products to University for impoundment and destruction, shall provide a written representation and warranty that they have no remaining inventory of Infringing Products in their possession, custody or control, nor do any of their employees, agents, representatives and/or vendors.

g. Defendants shall assign, transfer, and convey to University all right, title, interest, and goodwill in and to the Domain Names. Defendants shall assist University as necessary to complete the transfer rights of ownership and exclusive use of the Domain Names, and will execute all documents reasonably necessary or appropriate for this purpose.

4. In accordance with the parties' desires and the terms of the Agreement as communicated to the Court by the parties, the Court expressly retains jurisdiction to enforce the terms of the parties' Agreement and all orders in this case.

SO ORDERED.

Dated: April 10, 2012

/s/ Frederick P. Stamp, Jr.

Frederick P. Stamp, Jr.
United States District Judge

SEEN AND CONSENTED TO:

**WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS,
on behalf of West Virginia University**

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Exhibit A

